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In the Supreme Court of the United States

OCTOBER TERM, 1939

No. 161

MARTIN ENGEBRETSON, TRUSTEE OF THE ESTATE OF THE BRICTSON MANUFACTURING COMPANY, A CORPORATION, BANKRUPT,
Petitioner,

vs.

RALPH M. WEST, AND THE AETNA CASUALTY AND SURETY COMPANY, A CORPORATION,
Respondents.

No. 162

MARTIN ENGEBRETSON, TRUSTEE OF THE ESTATE OF THE BRICTSON MANUFACTURING COMPANY, A CORPORATION, BANKRUPT,
Petitioner,

vs.

JOHN T. MARCELL, HARRY S. BYRNE, AND FIDELITY AND DEPOSIT COMPANY OF MARYLAND, A CORPORATION,
Respondents.

BRIEF OF RESPONDENTS FIDELITY AND DEPOSIT COMPANY OF MARYLAND, A CORPORATION, AND THE AETNA CASUALTY AND SURETY COMPANY, A CORPORATION, IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

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A judgment rendered by a State Court of competent jurisdiction is binding and conclusive upon the parties when made the basis of a claim or defense in any court of the United States, and cannot be rebuked or reexamined as to the merits of the original controversy. It will be conclusive as to all points and questions actually put in issue and decided in the action in the State Court, whether federal, general or local.

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In the
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MARTIN ENGEBRETSON, TRUSTEE OF THE ESTATE OF THE BRICTSON MANUFACTURING COMPANY, A CORPORATION, BANKRUPT,
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JOHN T. MARCELL, HARRY S. BYRNE, AND FIDELITY AND DEPOSIT COMPANY OF MARYLAND, A CORPORATION,
Respondents.

BRIEF OF RESPONDENTS FIDELITY AND DEPOSIT COMPANY OF MARYLAND, A CORPORATION, AND THE AETNA CASUALTY AND SURETY COMPANY, A CORPORATION, IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

The petition for a writ of certiorari seeks to review judgments of the Circuit Court of Appeals for the Eighth Circuit, affirming decisions of the United States District Court, for the District of South Dakota, Southern Division.

The two cases presented involve the same state of facts, and in the interest of brevity, respondents in the two actions have joined in one brief in opposition to the petition for the writ.

The two actions were consolidated for trial before the trial court. Separate appeals were perfected. The record in the first case numbered 11,590 in the Circuit Court of Appeals contains the evidence. Reference in this brief to the record in the first case will be referred to as "R" and to the record in the second case as "R 2."

The questions presented are:

(1) Whether the judgments of the Circuit Court of Appeals entered in the case of *Marcell, et al, vs. Engebretson,* 74 F. (2d) 93 and in the case of *Engebretson vs. Marcell, et al,* 84 F. (2d) 315, or either of them, constituted res judicata of the issues presented in the case at bar.

(2) Whether the judgment of the Supreme Court of the State of Nebraska in the quo warranto action entitled *State ex rel Spillman vs. Brictson Manufacturing Company,* 114 Neb. 341; 207 N. W. 664, was superseded by the National Bankruptcy Act under bankruptcy proceedings subsequently instituted agaist the Brictson Manufacturing Compapny.

(3) Whether Ralph M. West, appointed by the United States District Court for the District of Nebraska, Omaha Division, was justified in turning over the assets of the Brictson Manufacturing Company, then in his possession as Receiver, upon order of that court to the Trustees appointed by the Nebraska Supreme Court after supervening bankruptcy in the United States Dis-

trict Court for the District of South Dakota, Southern Division.

(4) Whether the order of the State Court in the quo warranto action refusing to direct the Nebraska Trustees to deliver the assets of the Brictson Manufacturing Company, then in their possession, to the Trustee in Bankruptcy constituted res judicata of the issue of whether the Nebraska Trustees breached their bond as Trustees by taking possession of the assets of the Brictson Manufacturing Company after the company had been adjudicated a bankrupt in the South Dakota Court.

STATEMENT OF FACTS

The proceedings, so far as here relevant, are briefly summarized as follows:

August 2, 1921. Bill of complaint was filed in the United States District Court, for the District of Nebraska, Omaha Division, by stockholders, against the Brictson Manufacturing Company, a South Dakota corporation, then doing business in Nebraska, praying among other things, for the appointment of a receiver (R. 95-103).

September 3, 1921. That Court appointed Ralph M. West of Omaha, Nebraska, receiver, and under this appointment the receiver took possession of the property and assets of the defendant company, including the property involved in this proceeding (R. 24).

April 5, 1922. The United States Circuit Court of Appeals for the Eighth Circuit, entered a judgment reversing the order appointing the receiver (Brictson vs. Close, 280 Fed. 297).

March 13, 1923. The Attorney General of the State of Nebraska commenced an action in the District Court

of Douglas County, Nebraska, in the nature of a quo warranto proceeding (R. 129-143).

The corporation appeared in the action (R. 143).

February 16, 1924. After hearing, a decree was entered in that Court, finding generally for the plaintiff and against the defendant, ousting the corporation from the State of Nebraska and appointing John F. Moriarty, Charles E. Foster and John T. Marcell, trustees, and directing the trustees so appointed to collect the debts, property and assets of the corporation in the State of Nebraska, to pay the liabilities of the corporation and divide the surplus, if any, among those lawfully entitled thereto (R. 154-158). The quo warranto proceedings were instituted pursuant to the provisions of Chapter 20, Article 21 Sub-division (h), Secs. 20-21,112 to 20-21,133, inclusive, Compiled Statutes of Nebraska, 1929.

November 24, 1925. The corporation filed a petition in the original proceeding in the United States District Court, for the District of Nebraska, Omaha Division (Close vs. Brictson Mfg. Co.) for an order to show cause, directed to the Attorney General of the State of Nebraska and the trustees appointed by the District Court of Douglas County, requiring them to show cause why the receiver (West) should not comply with the mandate theretofore issued by the Circuit Court of Appeals and return the property then in his hands to those from whom he had received it (Brictson Mfg. Co. vs. Close, et al, 25 F. (2d) 794). Ora S. Spillman, as Attorney General, of the State of Nebraska and the Trustees to whom the order was directed filed answers to the orders to show cause (R. 112-114).

March 25, 1926. The Supreme Court of the State of Nebraska, on hearing upon appeal prosecuted by the corporation to that Court, issued its mandate to the District Court of Douglas County, Nebraska, affirming the judgment of ouster of the corporation, modifying the judgment of the lower court so as to require the trustees to collect the debts due the corporation, pay the liabilities of the corporation and when properly ordered, to pay out the surplus, if any, to those lawfully entitled thereto, as provided by Section 9298, Compiled Statutes of Nebraska for 1922, and as thus modified the judgment of the District Court of Douglas County, Nebraska, to stand affirmed (R. 159-160) (Opinions reported in State vs. Brietson Manufacturing Co., 205 N. W. 246 and 207 N. W. 664).

November 3, 1926. After hearing upon the issues joined, Honorable Thomas C. Munger, Judge of the United States District Court for the District of Nebraska, entered a decree ordering and directing the receiver to turn the property involved in this proceeding over to the trustees appointed by the Nebraska Court, said order to be held in abeyance, however, with respect to an aggregate sum of $50,000.00 pending a final determination of the rights of one Frank L. Weaver, William N. Giller and M. E. Culhane, then pending in the United States Circuit Court of Appeals, on appeal from an order of the court made June 30, 1925, and further providing that in event an appeal should be taken by any of the parties that the receiver make none of the payments nor surrender any of the property without a further order of the Court (Brietson Mfg. Co. vs. Close, et al, 25 F. (2d) 794).

January 31, 1927. The appeal to determine the rights of Frank L. Weaver, William N. Giller and M. E. Culhane, which was an action to impress a lien upon the funds then in the hands of the receiver, for services rendered, was determined adversely to the appellants (Culhane, et al, vs. Anderson, et al, 17 Fed. (2d) 559).

April 2, 1928. Upon an appeal perfected by the corporation from the decree of the United States District Court, entered upon the 3rd day of November, 1926, the United States Circuit Court of Appeals for the Eighth Circuit, affirmed the decree directing the receiver West to turn the property involved in this proceeding over to the trustees appointed by the Nebraska Court (Brictson Mfg. Co. vs. Close, et al, 25 Fed. (2d) 794).

June 24, 1929. Order was entered by Judge Munger in that proceeding, directing the receiver, after making certain specific payments, to deliver all of the remainder of the money, funds, credits and property, real, personal and mixed, to the State trustees (R. 2, 41-43).

August 3, 1929. Petition in bankruptcy filed against the Brictson Manufacturing Company in the District Court of South Dakota, Southern Division, and on August 21, 1929, the Brictson Manufacturing Company was adjudicated a bankrupt, the petitioner herein, Martin Engebretson, being appointed trustee in bankruptcy in said proceeding (alleged in complaint R. 2, 19; admitted by answer R. 2, 33).

September 9, 1929. No supersedeas having been filed, the receiver did, on that date, comply with the order entered by United States District Court for District

of Nebraska, entered June 24, 1929, and turned over to the trustees appointed by the State Court, certain property, being the property involved in this proceeding (R. 188).

January 30, 1933. Petitioner Engebretson, as trustee in bankruptcy, upon a petition filed by him in the bankruptcy proceeding pending in South Dakota, procured an order to show cause, directed to the trustees appointed by the Nebraska Court, requiring them to appear before that Court to show cause why it should not be decreed that they had no right, title and interest in and to the assets of the Brietson Manufacturing Company, or any part thereof, or why they should not be ordered and directed to turn over to the petitioner all assets that they might have received after the filing of the petition in bankruptcy and be restrained and enjoined from in any manner interfering with the property of the bankrupt estate or with the trustee in bankruptcy in the administration of said estate.

The Nebraska trustees appeared specially, objected to the jurisdiction of the court over their persons, and asserted that, being adverse claimants, the court of bankruptcy was without power, in a summary proceeding, to determine the question of title or right to possession of the property in question, without their consent. The court of bankruptcy overruled the special appearance and entered an order adjudging that the trustee in bankruptcy was the owner and entitled to the possession of the property, and authorizing him to take all necessary and proper measures to secure its possession. An appeal was perfected to the Circuit Court of Appeals for the Eighth Circuit,

and that Court on November 22, 1934, filed its opinion in the appellate proceedings, holding the court below was without jurisdiction to adjudicate title to the property in the hands of the trustees appointed by the State Court, reversed the order, and remanded the case with directions to grant a dismissal (Marcell vs. Engebretson, 74 Fed. (2d) 93).

A rehearing was granted, the case reargued before the Circuit Court of Appeals, and on April 15, 1935, the court filed its opinion adhering to its former decision (Marcell vs. Engebretson, 76 Fed. (2d) 876). The trustee in bankruptcy filed a petition for a writ of certiorari in the Supreme Court of the United States to review the opinion and judgment of the Circuit Court of Appeals. This petition was denied by this Court on the 14th day of October, 1935 (Engebretson, Trustee, Petitioner, vs. Marcell, et al, 56 Supreme Court Rep. 89).

Thereafter, the trustee in bankruptcy brought a plenary action in the United States District Court for the District of Nebraska in the nature of a suit in equity, praying for a decree requiring the Nebraska trustees to account for and turn over to the trustee in bankruptcy all of the property formerly belonging to the Brictson Manufacturing Company which had come into their hands, this being the property involved in the present suit. The trustees filed a motion to dismiss on the ground that the Federal Court was without jurisdiction over the subject matter. The motion was sustained and an order entered dismissing the complaint. The trustee prosecuted an appeal to the Circuit Court of Appeals for the Eighth Circuit, and on June 12, 1936, that Court filed its opinion

affirming the order of the United States District Court for the District of Nebraska, again holding that the Nebraska State Court in the quo warranto proceedings had acquired jurisdiction to administer the assets free from interference from the other courts, including the court of bankruptcy (Engebretson vs. Marcell, et al, 84 Fed. (2d) 315).

The trustee in bankruptcy filed a petition for writ of certiorari in this Court to review the opinion and judgment entered by the Circuit Court of Appeals. The petition was denied by this Court on the 12th day of October, 1936. (Engebretson, Trustee, Petitioner, vs. Marcell, et al, 299 U. S. 566).

Petition for rehearing was denied November 9, 1936 (Engebretson, Trustee, Petitioner, vs. Marcell, et al, 299 U. S. 621).

On the 25th day of July, 1938, the trustee in bankruptcy filed an action in the Circuit Court of the State of South Dakota, for the Second Judicial District against John T. Marcell, Harry S. Byrne and Fidelity & Deposit Company of Maryland, a corporation, alleging that the defendants Marcell and Byrne, as trustees appointed by the Nebraska State Court, had wrongfully converted property of the Brietson Manufacturing Company and that the defendant Fidelity & Deposit Company of Maryland was liable to the plaintiff by virtue of a faithful performance bond executed on behalf of the said Marcell and Byrne as trustees appointed by the State Court of Nebraska. The prayer of the petition was for a money judgment against Marcell and Byrne in the sum of $78,398.88 and for a judgment against Fidelity & Deposit Company of Maryland as bondsman in the sum of $50,000.00, this

being the face amount of the bond (R. 2, 17-22). A similar action was filed against Ralph M. West and the Aetna Casualty and Surety Company (R. 19-23).

No service having been made upon defendants Marcell, Byrne or West within the jurisdiction of the South Dakota Court, they filed special appearances, challenging the jurisdiction of the Court over their person, and petitions for removal to the United States District Court for the District of South Dakota, Southern Division (R. 2, 9-11) (R. 2, 10-14).

The defendants Fidelity Deposit Company of Maryland and the Aetna Casualty and Surety Company filed separate petitions for removal to the Federal Court (R. 2, 12, 13) (R. 5-7).

Removal orders were entered by the State Court (R. 2, page 3) (R. 1-2).

Orders sustaining the special appearances and granting the motion to quash service on the defendants Marcell, Byrne and West were entered by the Honorable A. Lee Wyman, Judge of the United States District Court for the District of South Dakota, Southern Division (R. 2, 44, 45) (R. 50).

A jury was waived and the causes consolidated for trial (R. 2, 55). The cases as consolidated were tried before the Honorable A. Lee Wyman, Judge of the United States District Court for the District of South Dakota.

On the 17th day of April, 1939, that Court filed findings of fact and conclusions of law finding that the Nebraska State Court trustees were rightfully entitled to the possession of the property at the time it was turned

over to them by West as receiver, and that the plaintiff, as trustee in bankruptcy of the Brictson Manufacturing Company, was not the owner thereof and was not entitled to the possession thereof, either at said time or at any other time, and that the property was not a part of the bankrupt estate. The Court further found that there was no evidence that the Nebraska State Court trustees, or any of them, ever breached any of the terms of the bond, upon which the action is based, or that any of them converted or misapplied any of the property referred to in the action (R. 2, 60).

In its conclusions of law, the Court found that none of the State Court trustees misapplied or converted any of the property referred to in the plaintiff's complaint or breached any of the terms of the bond upon which the action was based; that the property did not become a part of the bankrupt estate, and the trustee in bankruptcy was not entitled to possession of it; that at the time the property was turned over to the Nebraska State Court trustees, they were the owners thereof and entitled to possession; that the decision of the United States Circuit Court of Appeals, reported in 25 Fed. (2d) 794, constitutes a final determination that the property, which the plaintiff alleges was converted, belonged to the Nebraska State Court trustees to be administered by them under its direction; that the decision of the United States Circuit Court of Appeals in the cases reported in 74 Fed (2d) 93, and 84 Fed. (2d) 315, respectively, are res judicata and binding upon the plaintiff in this action, and that those decisions finally determined that the plaintiff was not the owner of the property and not entitled to possession thereof; that the order of the Nebraska State Court in the quo

warranto proceedings on June 18, 1930, was a final order and is res judicata upon the question of the right of the plaintiff to possession of the property and bars the plaintiff a right of recovery in this action (R. 2, 63, 64).

Similar findings of fact and conclusions of law were filed in the action against West and the Aetna Casualty and Surety Company, a corporation (R. 60-67).

April 17, 1939. Pursuant to the findings of fact and conclusions of law, judgments were entered dismissing the plaintiff's complaints upon the merits (R. 2, 65 66) (R. 68).

POINTS AND AUTHORITIES

I.

A judgment rendered by a State Court of competent jurisdiction is binding and conclusive upon the parties when made the basis of a claim or defense in any court of the United States, and cannot be reviewed or re-examined as to the merits of the original controversy. It will be conclusive as to all points and questions actually put in issue and decided in the action in the State Court, whether federal, general or local.

Mitchell v. First National Bank of Chicago, 180 U. S. 471, 481, 21 S. Ct. 418, 422.

Lion Bonding and Surety Company v. Karatz, 262 U. S. 77, 43 S. Ct. 480.

Brictson Manufacturing Company v. Close, 25 Fed. (2d) 794, 800.

Marcell, et al v. Engebretson, 74 Fed. (2d) 93, 95.

34 *C. J.*, 1158, Section 1640.

II.

Proceedings in a State Court, which resulted in appointment of trustees to take over property of corporation for liquidation and distribution prior to four months'

period preceding filing of involuntary bankruptcy petition, withdrew property of corporation from jurisdiction of bankruptcy court and subsequent bankruptcy proceedings, though State Court trustees had not come into possession of property.

Marcell v. Engebretson, 74 Fed. (2d) 93.

Palmer v. State of Texas, et al, 212 U. S. 118, 129, 29 S. Ct. 230, 233.

Pickens v. Roy, 187 U. S. 177, 23 S. Ct. 78.

Frazier, et al, v. Southern Loan and Trust Co., 99 Fed. 707.

Lion Bonding and Surety Company v. Karatz, 262 U. S. 77.

Remington on Bankruptcy, Third Edition, Vol. 5, Section 2042.

III.

Judgments entered in Brictson Manufacturing Company v. Close, et al, 25 Fed. (2d) 794; Marcell vs. Engebretson, 74 Fed. (2d) 93, 76 Fed. (2) 876, and Engebretson v. Marcell, et al, 84 Fed. (2d) 315, are res judicata between the parties thereto and their privies and the Trustee in Bankruptcy is estopped to assert a claim for damages against the Surety of the State Trustees based upon wrongful conversion of the property taken over by the State Trustees in their official capacity.

Howe & Rogers Co. v. Crittenden, et al, 76 Fed. (2d) 749.

Columbia Fire Ins. Co. of New Jersey vs. Mart Waterman Co., Inc., 11 Fed. (2d) 216, 219.

Scholtz, Governor, for Use of Barnett National Bank, vs. Hartford Accident and Indemnity Co., 88 Fed. (2d) 184.

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Hartford Life Insurance Co. vs. Ibs, 237 U. S. 662.

City of Watertown vs. Eastern Dakota Electric Co., 296 Fed. 832, 834, 835.
Cromwell vs. Sac County, 94 U. S. 351.
Miller vs. Belvy Oil Co., 248 Fed. 83.
North American Union vs. Hart, 250 Fed. 390.
Rader vs. Star Mill, etc. Co., 258 Fed. 599.
Mitchell vs. First National Bank of Chicago, 180 U. S. 471.
Brictson Manufacturing Co. vs. Close, et al, 25 Fed. (2d) 794.

ARGUMENT

The Circuit Court of Appeals, for the reason stated in its opinion (R. 211-219) entered its judgment affirming the decisions of the District Court (R. 219, 220) (R. 2, 99-100).

The facts disclosed by the record, the issues raised thereby, and the law applicable thereto are fairly and fully set forth in the opinion. The merits of this controversy have actually been finally determined on five different occasions.

The Brictson Manufacturing Company, on November 24, 1925, nearly four years before bankruptcy intervened, raised the issue of the right of possession to the property involved in this proceeding. Under issues joined between the parties in the original proceeding pending in the United States District Court for the District of Nebraska, that Court held that under the proceedings instituted by the Attorney General in the State Court of Nebraska, the state trustees acquired jurisdiction of the property in Nebraska held by West as receiver, and were entitled to possession thereof. The Brictson Manufacturing Com-

pany appealed to the Circuit Court of Appeals for the Eighth Circuit, and that Court held that the judgment of the Supreme Court of the State of Nebraska in the ouster proceedings was a final adjudication and binding upon the corporation. In its opinion, the Court said:

> "In Mitchell v. First National Bank of Chicago, 180 U. S. 471, 481, 21 S. Ct. 418, 422 (45 L. Ed. 627) it is said:
>
> " 'Whatever may be the nature of a question presented for judicial determination—whether depending on federal, general, or local law—if it be embraced by the issues made, its determination by a court having jurisdiction of the parties and of the subject-matter binds the parties and their privies so long as the judgment remains unmodified or unreversed.'
>
> "The Supreme Court of Nebraska in the quo warranto proceeding brought by the Attorney General on behalf of the state found that the District Court was justified in ousting the Brictson Manufacturing Company from doing business in Nebraska; found that the trustees were entitled to take charge of the property of said corporation within the state for the purpose of paying the creditors, and that the balance should be turned over to the parties whom the court might direct. It seems to us the federal court had no other alternative than to abide by the binding effect upon appellant of that unchallenged decision. * * * " (Brictson Mfg. Co. v. Close, 25 Fed. (2d) 794, 800.)

Thereafter the trustee in bankruptcy appeared in the quo warranto proceedings in the Nebraska State Court and made application for an order requiring the state trustees to turn over the property involved in this proceeding to the trustee in bankruptcy (R. 170, 171). This

application was overruled by the State Court (R. 2, 43, 44). No appeal was taken from this order (R. 190).

It is respondents' contention that this order is a final order involving the issues presented in this proceeding and is res judicata under the rule above set forth. The Circuit Court of Appeals for the Eighth Circuit was again called upon to pass upon this question in the case of *Marcell, et al vs. Engebretson,* 74 Fed. (2d) 93, 96. In that case the Appellate Court held that "at the time the involuntary petition in bankruptcy was filed, the corporation had neither the actual possession of its property in the State of Nebraska nor the right to such possession. * * * " The Court applied the rule announced by this Court that "when a court of competent jurisdiction takes possession of property through its officers, this withdraws the property from the jurisdiction of all other courts which, though of concurrent jurisdiction, may not disturb that possession; and that the court originally acquiring jurisdiction is competent to hear and determine all questions respecting title, possession, and control of the property."

The trustee in bankruptcy filed a petition for writ of certiorari in this Court to review the opinion and judgment entered by the Appellate Court, and the petition was denied on the 14th day of October, 1935. *Engebretson, Trustee, Petitioner vs. Marcell, et al,* 56 Supreme Court Rep. 89.

At the conclusion of this litigation, the trustee in bankruptcy commenced a plenary action in the United States District Court for the District of Nebraska, asking for a decree requiring the trustees appointed by the

State Court of Nebraska to account for and turn over the identical property that is the basis of the present action. That Court sustained a motion to dismiss the plaintiff's petition for lack of jurisdiction. The trustee again prosecuted an appeal to the Circuit Court of Appeals for the Eighth Circuit, and again that Court was called upon to pass upon the right of possession to the property. In sustaining the trial court's order dismissing the case for lack of jurisdiction, the Court said:

> " * * * We have again reached the same conclusions to which we gave expression in the Marcell Case. It is, of course, clear that, if our decision in that case to the effect that the Nebraska state court in the quo warranto proceedings had acquired jurisdiction to administer the assets free from interference by other courts, including the court of bankruptcy, was correct, then this case is governed by that decision, and the court below had no other recourse than to dismiss the complaint." *Engebretson vs. Marcell,* 84 Fed. (2d) 315, 316.

The trustee in bankruptcy filed a peittion for a writ of certiorari in this Court to review the opinion and judgment of the Appellate Court. The petition was denied by this Court on the 12th day of October, 1936. *Engebretson, Trustee, Petitioner vs. Marcell, et al,* 299 U. S. 566.

It would extend this brief unnecessarily to recapitulate the reasons and citations supporting the decisions of the Circuit Court of Appeals for the Eighth Circuit above set forth since the citations are incorporated in the respective opinions.

———o———

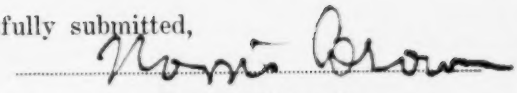
CONCLUSION

We submit that the decision of the Circuit Court of Appeals is consistent with the decisions of this Court and that it is clearly established on the record:

1. The trustee in bankruptcy did not acquire the right of possession to the property involved by virtue of the bankruptcy proceedings for the reason that title and right of possession to the property had passed into the jurisdiction of the State Court by virtue of the quo warranto proceedings which had finally been concluded more than four months prior to the filing of the petition in bankruptcy.

2. That the decision of the Supreme Court of the State of Nebraska in the quo warranto proceeding, the decision of the District Court of Douglas County, Nebraska, in the quo warranto proceedings denying the application of the trustee for a turn-over order of the property involved, from which no appeal was taken, and the three decisions of the United States Circuit Court of Appeals for the Eighth Circuit, all determining the right of the State Trustees to possession of the property, which the Trustee in Bankruptcy now claims was wrongfully converted, were each res judicata under the rule announced in *Mitchell v. First National Bank of Chicago,* 180 U. S. 471, 481, 21 S. Ct. 418, 422.

Respectfully submitted,



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